

## MEDICAL CONTESTED CASE HEARING NO. 16010

### **DECISION AND ORDER**

This case is decided pursuant to Chapter 410 of the Texas Workers' Compensation Act and the Rules of the Division of Workers' Compensation. For the reasons discussed herein, the Hearing Officer determines that Claimant is not entitled to an additional 12 physical therapy (PT) visits – three visits per week over four weeks – for the compensable left hand/thumb injury of (Date of Injury).

### **STATEMENT OF THE CASE**

A contested case hearing (CCH) was held on November 23, 2015 to decide the following disputed issue:

Is the preponderance of the evidence contrary to the decision of the Independent Review Organization (IRO) that Claimant is not entitled to an additional 12 PT visits – three visits per week over four weeks – for the compensable left hand/thumb injury of (Date of Injury)?

### **PARTIES PRESENT**

Petitioner/Claimant appeared and was assisted by PB, an ombudsman. Respondent/Carrier appeared and was represented by BJ, an attorney.

### **DISCUSSION**

Claimant's testimony in the hearing indicates that on (Date of Injury), she slipped and fell forward twice on an outstretched left hand on a wet floor, injuring her left hand, left wrist, left knee and right ankle. Subsequently, she was diagnosed with a left hand laceration, a left thumb ulnar collateral ligament (UCL) injury and tenosynovitis. By September 2014, her left knee and right ankle pain had resolved; however, she continued with left thumb pain and continued decreased strength in her left hand and wrist. Claimant's course of treatment for her UCL left hand injury has included an orthopedic brace/splint, a thumb spica cast, physical therapy (PT), oral medications, left thumb metacarpophalangeal joint (MPJ) injections, and modified activity. A left hand MRI scan was ordered and was interpreted as unremarkable.

The evidence further reflects that by January 2015, Claimant had completed 24 PT visits; however, she continued to complain of severe left thumb and wrist pain, numbness, soreness, weak grip strength and the inability to move her thumb. During April 2015, her treating doctor, hand specialist MM, M.D., noted that Claimant still had insufficient left grip strength. In a progress note dated April 9, 2015, he wrote that Claimant had an injury to her left thumb UCL

and negative tests for carpal tunnel syndrome, including two-point discrimination, and he recommended left thumb MPJ injections. It is noted that the injections helped in reducing pain, and Dr. M recommended additional PT to increase range of motion and strength.

During the hearing, Claimant described her symptoms and treatment to date, explaining that she has difficulty picking up and holding onto items and caring for her young daughter. Dr. M submitted a request for the proposed additional 12 visits of PT, and it was denied by two Utilization Review Agents (URAs) – one on an initial review, the other following a request for reconsideration. After the adverse determination by the URA on reconsideration, Claimant appealed to an Independent Review Organization (IRO). The IRO reviewer, board certified in physical medicine and rehabilitation with over 18 years of experience, upheld the URA denial of the proposed treatment.

The IRO reviewer determined that the requested additional 12 PT visits was not health care reasonably required for Claimant's compensable injury of (Date of Injury). As part of the IRO report, on May 27, 2015, the IRO reviewer wrote that the request exceeds the Official Disability Guidelines (ODG) recommended number of visits and the timeframe for diagnoses. The IRO reviewer noted that clinically, after a documented 24 PT visits over nine months, there was a plateau in gains in thumb range of motion and grip. The IRO reviewer mentioned documentation showing full-duty work and referenced questions regarding instruction in and compliance with a home exercise program. Claimant appealed the IRO decision and requested this medical CCH to determine the medical necessity of the proposed additional 12 PT visits.

Texas Labor Code Section 408.021 provides that an employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of the injury as and when needed. Health care reasonably required is further defined in Texas Labor Code Section 401.011 (22a) as health care that is clinically appropriate and considered effective for the injured employee's injury and provided in accordance with best practices consistent with evidence based medicine or, if evidence based medicine is not available, then generally accepted standards of medical practice recognized in the medical community. Health care under the Texas Workers' Compensation system must be consistent with evidence based medicine if that evidence is available. Evidence based medicine is further defined in Texas Labor Code Section 401.011 (18a) to be the use of the current best quality scientific and medical evidence formulated from credible scientific studies, including peer-reviewed medical literature and other current scientifically based texts and treatment and practice guidelines. The Commissioner of the Division of Workers' Compensation is required to adopt treatment guidelines that are evidence-based, scientifically valid, outcome-focused, and designed to reduce excessive or inappropriate medical care while safeguarding necessary medical care. Texas Labor Code Section 413.011(e). Medical services consistent with the medical policies and fee guidelines adopted by the commissioner are presumed reasonable in accordance with Texas Labor Code Section 413.017(1).

In accordance with the above statutory guidance, the Division of Workers' Compensation has adopted treatment guidelines by Division Rule 137.100. This rule directs health care providers to provide treatment in accordance with the current edition of the ODG, and such treatment is presumed to be health care reasonably required as defined in the Texas Labor Code. Thus, the focus of any health care dispute starts with the health care set out in the ODG. Also, in accordance with Division Rule 133.308(s), "A decision issued by an IRO is not considered an agency decision and neither the Department nor the Division are considered parties to an appeal. In a Contested Case Hearing (CCH), the party appealing the IRO decision has the burden of overcoming the decision issued by an IRO by the preponderance of evidence-based medical evidence."

Petitioner/Claimant, as the party challenging the IRO decision, has the burden of proof to overcome that decision by the preponderance of evidence-based medical evidence. Evidence-based medical evidence entails the opinion of a qualified expert that has some basis in evidence-based medicine. Expert evidence is required in all medical necessity disputes and Claimant's lay testimony is not probative on questions requiring expert evidence, such as the inquiry into the medical necessity of the treatment at issue.

The ODG Physical/Occupational Therapy Chapter provides as follows in the entry related to Therapy Guidelines for the Hand/Wrist –

Allow for fading of treatment frequency (from up to 3 visits or more per week to 1 or less), plus active self-directed home PT. More visits may be necessary when grip strength is a problem, even if range of motion is improved. Also see other general guidelines that apply to all conditions under Physical Therapy in the *ODG Preface*.

**Fracture of carpal bone (wrist) (ICD9 814):**

Medical treatment: 8 visits over 10 weeks

Post-surgical treatment: 16 visits over 10 weeks

**Fracture of metacarpal bone (hand) (ICD9 815):**

Medical treatment: 9 visits over 3 weeks

Post-surgical treatment: 16 visits over 10 weeks

**Fracture of one or more phalanges of hand (fingers) (ICD9 816):**

Minor, 8 visits over 5 weeks

Post-surgical treatment: Complicated, 16 visits over 10 weeks

**Fracture of radius/ulna (forearm) (ICD9 813):**

Medical treatment: 16 visits over 8 weeks

Post-surgical treatment: 16 visits over 8 weeks

**Dislocation of wrist (ICD9 833):**

Medical treatment: 9 visits over 8 weeks

Post-surgical treatment (TFCC reconstruction): 16 visits over 10 weeks

**Dislocation of finger (ICD9 834):**

9 visits over 8 weeks

Post-surgical treatment: 16 visits over 10 weeks

**Trigger finger (ICD9 727.03):**

Post-surgical treatment: 9 visits over 8 weeks

**Radial styloid tenosynovitis (de Quervain's) (ICD9 727.04):**

Medical treatment: 12 visits over 8 weeks

Post-surgical treatment: 14 visits over 12 weeks

**Synovitis and tenosynovitis (ICD9 727.0):**

Medical treatment: 9 visits over 8 weeks

Post-surgical treatment: 14 visits over 12 weeks

**Mallet finger (ICD9 736.1)**

16 visits over 8 weeks

**Contracture of palmar fascia (Dupuytren's) (ICD9 728.6):**

Post-surgical treatment: 12 visits over 8 weeks

**Ganglion and cyst of synovium, tendon, and bursa (ICD9 727.4):**

Post-surgical treatment: 18 visits over 6 weeks

**Ulnar nerve entrapment/Cubital tunnel syndrome (ICD9 354.2):**

Medical treatment: 14 visits over 6 weeks

Post-surgical treatment: 20 visits over 10 weeks

**Sprains and strains of wrist and hand (ICD9 842):**

9 visits over 8 weeks

**Sprains and strains of elbow and forearm (ICD9 841):**

Medical treatment: 9 visits over 8 weeks

Post-surgical treatment/ligament repair: 24 visits over 16 weeks

Open wound of finger or hand (ICD9 883):

9 visits over 8 weeks. See also *Early mobilization* (for tendon injuries).

Post-surgical treatment/tendon repair: 24 visits over 16 weeks

**Pain in joint (ICD9 719.4):**

9 visits over 8 weeks

**Arthropathy, unspecified (ICD9 716.9):**

Post-surgical treatment, arthroplasty/fusion, wrist/finger: 24 visits over 8 weeks

Claimant testified at the hearing in support of the medical necessity of the proposed additional 12 PT visits for the relief of her current left hand symptoms that are interfering with her life. She stated that she suffers from left thumb numbness and severe pain and that she cannot use her left hand as a result of her compensable injury. Claimant's testimony was found to be credible and consistent with regard to her ongoing limited left thumb motion, grip weakness and continued symptoms of chronic pain following the compensable injury of (Date of Injury); however, no expert medical evidence was submitted to overcome the decision of the IRO by the preponderance of the evidence-based medical evidence.

Carrier presented the testimony of BS, M.D., a board-certified orthopedic surgeon, to support its position at the hearing. Dr. S testified that he agreed with the IRO decision. He stated that Claimant sustained a left wrist sprain and that the clinical findings do not support a diagnosis of carpal tunnel syndrome. He noted that Claimant had at least 24 PT visits, which far exceeds the ODG-recommended number of nine visits, over an eight week period of time. Dr. S testified that there were other options available to Claimant and that she could participate in a self-directed home exercise program to increase grip strengthening.

Based on the evidence presented, Petitioner/Claimant did not meet her burden of proof to overcome the decision of the IRO by the preponderance of evidence-based medical evidence. As the preponderance of the evidence is not contrary to the decision of the IRO that the requested additional 12 PT visits – three times per week over four weeks – for the left hand/thumb is not health care reasonably required for the compensable injury of (Date of Injury), Claimant is held not to be entitled to this additional treatment.

The Hearing Officer considered all of the evidence admitted. The Findings of Fact and Conclusions of Law are based on an assessment of all of the evidence whether or not the evidence is specifically discussed in this Decision and Order.

## **FINDINGS OF FACT**

1. The parties stipulated to the following facts:
  - A. Venue is proper in the (City) Field Office of the Texas Department of Insurance, Division of Workers' Compensation.
  - B. On (Date of Injury), Claimant was the employee of (Employer), Employer, and sustained a compensable injury in the form of a left knee laceration and derangement, left hand laceration, right ankle sprain and left wrist UCL tear.
  - C. On (Date of Injury), Employer provided workers' compensation insurance coverage with Texas Mutual Insurance Company, Carrier.
  - D. The Independent Review Organization (IRO) determined that the health care at issue is not reasonably required for the compensable injury of (Date of Injury)
2. Carrier delivered to Claimant a single document stating the true corporate name of Carrier, and the name and street address of Carrier's registered agent, which document was admitted into evidence as Hearing Officer's Exhibit Number 2.
3. The additional 12 PT visits – three times per week over four weeks – is not health care reasonably required for the compensable injury of (Date of Injury)

## **CONCLUSIONS OF LAW**

1. The Texas Department of Insurance, Division of Workers' Compensation, has jurisdiction to hear this case.
2. Venue is proper in the (City) Field Office.
3. The preponderance of the evidence is not contrary to the decision of the IRO that the additional 12 PT visits – three times per week over four weeks – for the left hand/thumb is not health care reasonably required for the compensable injury of (Date of Injury)

## **DECISION**

Claimant is not entitled to an additional 12 PT visits – three times per week over four weeks – for the compensable left hand/thumb injury of (Date of Injury)

## **ORDER**

Carrier is not liable for the benefits at issue in this hearing. Claimant remains entitled to medical benefits for the compensable injury in accordance with §408.021.

The true corporate name of the insurance carrier is **TEXAS MUTUAL INSURANCE COMPANY**, and the name and address of its registered agent for service of process is

**MR. RICHARD GERGASKO, PRESIDENT  
6210 EAST HIGHWAY 290  
AUSTIN, TEXAS 78723**

Signed this 1<sup>st</sup> day of December, 2015.

Marilyn J. Allen  
Hearing Officer